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Cynthia Z. Levin, Esq. (SBN 27050)
Law Offices of Todd M. Friedman, P.C.
1150 First Avenue, Suite 501
King of Prussia, PA 19406
Phone: 888-595-9111 ext 618
Fax: 866 633-0228
clevin@attorneysforconsumers.com
Attorney for Plaintiff

FILED

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KATE BARILMAN, Clerk
By JL Dep. Clerk

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF PENNSYLVANIA**

18 2334

JOHN GALLOWAY and ZACHARY
GALLOWAY, individually and on
behalf of all others similarly situated,

Plaintiff,

vs.

ICOT HEARING SYSTEMS, LLC
d/b/a LISTENCLEAR; DOES 1-10,
inclusive,

Defendant(s).

Case No.

CLASS ACTION

**COMPLAINT FOR VIOLATIONS
OF:**

1. NEGLIGENT VIOLATIONS
OF THE TELEPHONE
CONSUMER PROTECTION
ACT [47 U.S.C. §227(b)]
2. WILLFUL VIOLATIONS
OF THE TELEPHONE
CONSUMER PROTECTION
ACT [47 U.S.C. §227(b)]
3. NEGLIGENT VIOLATIONS
OF THE TELEPHONE
CONSUMER PROTECTION
ACT [47 U.S.C. §227(c)]
4. WILLFUL VIOLATIONS
OF THE TELEPHONE
CONSUMER PROTECTION
ACT [47 U.S.C. §227(c)]

DEMAND FOR JURY TRIAL

Plaintiffs JOHN GALLOWAY and ZACHARY GALLOWAY
("Plaintiffs"), individually and on behalf of all others similarly situated, allege the
following upon information and belief based upon personal knowledge:

NATURE OF THE CASE

1
2 1. Plaintiffs bring this action individually and on behalf of all others
3 similarly situated seeking damages and any other available legal or equitable
4 remedies resulting from the illegal actions of ICOT HEARING SYSTEMS, LLC
5 d/b/a LISTENCLEAR (“Defendant”) in negligently, knowingly, and/or willfully
6 contacting Plaintiffs on Plaintiffs’ cellular telephone in violation of the Telephone
7 Consumer Protection Act, 47. U.S.C. § 227 *et seq.* (“TCPA”), thereby invading
8 Plaintiffs’ privacy.

JURISDICTION & VENUE

9
10 2. Jurisdiction is proper under 28 U.S.C. § 1332(d)(2) because Plaintiffs,
11 residents of Pennsylvania, seek relief on behalf of a Class, which will result in at
12 least one class member belonging to a different state than that of Defendant, a
13 company with its principal place of business in the state of Georgia. Plaintiffs also
14 seek up to \$1,500.00 in damages for each call in violation of the TCPA, which,
15 when aggregated among a proposed class in the thousands, exceeds the
16 \$5,000,000.00 threshold for federal court jurisdiction. Therefore, both diversity
17 jurisdiction and the damages threshold under the Class Action Fairness Act of 2005
18 (“CAFA”) are present, and this Court has jurisdiction.

19 3. Venue is proper in the United States District Court for the Eastern
20 District of Pennsylvania pursuant to 18 U.S.C. 1391(b) and 18 U.S.C. § 1441(a)
21 because Defendant does business within the state of Pennsylvania and Plaintiff
22 resides within this District.

PARTIES

23
24 4. Plaintiff, JOHN GALLOWAY (“Plaintiff John”), is a natural person
25 residing in Ridley Park, Pennsylvania and is a “person” as defined by 47 U.S.C. §
26 153 (39).

27 5. Plaintiff, ZACHARY GALLOWAY (“Plaintiff Zachary”), is a natural
28 person residing in Ridley Park, Pennsylvania and is a “person” as defined by 47

1 *U.S.C. § 153 (39).*

2 6. Plaintiff John and Plaintiff Zachary will be collectively referred to
3 herein as "Plaintiffs."

4 7. Defendant, ICOT HEARING SYSTEMS, LLC d/b/a LISTENCLEAR
5 ("Defendant"), is a company involved in the sale of hearing assistive devices and
6 is a "person" as defined by *47 U.S.C. § 153 (39)*.

7 8. The above named Defendant, and their subsidiaries and agents, are
8 collectively referred to as "Defendant." The true names and capacities of the
9 Defendant sued herein as DOE DEFENDANT 1 through 10, inclusive, are
10 currently unknown to Plaintiff, who therefore sues such Defendant by fictitious
11 names. Each of the Defendant designated herein as a DOE is legally responsible
12 for the unlawful acts alleged herein. Plaintiffs will seek leave of Court to amend
13 the Complaint to reflect the true names and capacities of the DOE Defendant when
14 such identities become known.

15 9. Plaintiffs are informed and believes that at all relevant times, each and
16 every Defendant was acting as an agent and/or employee of each of the other
17 Defendant and was acting within the course and scope of said agency and/or
18 employment with the full knowledge and consent of each of the other Defendant.
19 Plaintiffs are informed and believes that each of the acts and/or omissions
20 complained of herein was made known to, and ratified by, each of the other
21 Defendant.

22 **FACTUAL ALLEGATIONS**

23 10. Beginning in and around April 24, of 2018, Defendant contacted
24 Plaintiffs on their cellular telephone, ending in -9921, in an attempt to solicit
25 Plaintiff to purchase Defendant's services.

26 11. Defendant used an "automatic telephone dialing system" as defined
27 by *47 U.S.C. § 227(a)(1)* to place its call to Plaintiffs seeking to solicit its services.

28 12. Defendant contacted or attempted to contact Plaintiffs from telephone

1 numbers (610) 928-9488, (610) 379-3399, (610) 379-3391, (610) 379-3356, and
2 (610) 379-1514, all confirmed to be Defendant' number.

3 13. Defendant's calls constituted calls that were not for emergency
4 purposes as defined by 47 U.S.C. § 227(b)(1)(A).

5 14. Defendant's calls were placed to telephone number assigned to a
6 cellular telephone service for which Plaintiffs incurs a charge for incoming calls
7 pursuant to 47 U.S.C. § 227(b)(1).

8 15. During all relevant times, Defendant did not possess Plaintiffs' "prior
9 express consent" to receive calls using an automatic telephone dialing system or an
10 artificial or prerecorded voice on their cellular telephone pursuant to 47 U.S.C. §
11 227(b)(1)(A).

12 16. Further, Plaintiff's cellular telephone number has been on the National
13 Do-Not-Call Registry since at least December 21, 2006.

14 17. Defendant placed multiple calls soliciting its business to Plaintiffs on
15 their cellular telephone in or around May of 2018.

16 18. Such calls constitute solicitation calls pursuant to 47 C.F.R. §
17 64.1200(c)(2) as they were attempts to promote or sell Defendant' services.

18 19. Plaintiffs received numerous solicitation calls from Defendant within
19 a 12-month period.

20 20. Defendant continued to call Plaintiffs in an attempt to solicit its
21 services and in violation of the National Do-Not-Call provisions of the TCPA.

22 21. Upon information and belief, and based on Plaintiffs' experiences of
23 being called by Defendant after being on the National Do-Not-Call list for several
24 years prior to Defendant initial call, and at all relevant times, Defendant failed to
25 establish and implement reasonable practices and procedures to effectively prevent
26 telephone solicitations in violation of the regulations prescribed under 47 U.S.C. §
27 227(c)(5).

28 **CLASS ALLEGATIONS**

1 22. Plaintiffs bring this action individually and on behalf of all others
2 similarly situated, as a member the two proposed classes (hereafter, jointly, "The
3 Classes").

4 23. The class concerning the ATDS claim for no prior express consent
5 (hereafter "The ATDS Class") is defined as follows:

6 All persons within the United States who received any
7 solicitation/telemarketing telephone calls from
8 Defendant to said person's cellular telephone made
9 through the use of any automatic telephone dialing
10 system or an artificial or prerecorded voice and such
11 person had not previously consented to receiving such
12 calls within the four years prior to the filing of this
13 Complaint

14 24. The class concerning the National Do-Not-Call violation (hereafter
15 "The DNC Class") is defined as follows:

16 All persons within the United States registered on the
17 National Do-Not-Call Registry for at least 30 days, who
18 had not granted Defendant prior express consent nor had
19 a prior established business relationship, who received
20 more than one call made by or on behalf of Defendant
21 that promoted Defendant' products or services, within
22 any twelve-month period, within four years prior to the
23 filing of the complaint.

24 25. Plaintiffs represent, and is a member of, The ATDS Class, consisting
25 of all persons within the United States who received any solicitation/telemarketing
26 telephone calls from Defendant to said person's cellular telephone made through
27 the use of any automatic telephone dialing system or an artificial or prerecorded
28 voice and such person had not previously consented to receiving such calls within
the four years prior to the filing of this Complaint.

26. Plaintiffs represent, and are members of, The DNC Class, consisting

1 of all persons within the United States registered on the National Do-Not-Call
2 Registry for at least 30 days, who had not granted Defendant prior express consent
3 nor had a prior established business relationship, who received more than one call
4 made by or on behalf of Defendant that promoted Defendant' products or services,
5 within any twelve-month period, within four years prior to the filing of the
6 complaint.

7 27. Defendant, including their employees and agents, are excluded from
8 The Classes. Plaintiffs do not know the number of members in The Classes, but
9 believes the Classes members number in the thousands, if not more. Thus, this
10 matter should be certified as a Class Action to assist in the expeditious litigation of
11 the matter.

12 28. The Classes are so numerous that the individual joinder of all of its
13 members is impractical. While the exact number and identities of The Classes
14 members are unknown to Plaintiffs at this time and can only be ascertained through
15 appropriate discovery, Plaintiffs are informed and believe and thereon allege that
16 The Classes includes thousands of members. Plaintiffs allege that The Classes
17 members may be ascertained by the records maintained by Defendant.

18 29. Plaintiffs and members of The ATDS Class were harmed by the acts
19 of Defendant in at least the following ways: Defendant illegally contacted Plaintiffs
20 and ATDS Class members via their cellular telephones thereby causing Plaintiffs
21 and ATDS Class members to incur certain charges or reduced telephone time for
22 which Plaintiffs and ATDS Class members had previously paid by having to
23 retrieve or administer messages left by Defendant during those illegal calls, and
24 invading the privacy of said Plaintiff and ATDS Class members.

25 30. Common questions of fact and law exist as to all members of The
26 ATDS Class which predominate over any questions affecting only individual
27 members of The ATDS Class. These common legal and factual questions, which
28 do not vary between ATDS Class members, and which may be determined without

1 reference to the individual circumstances of any ATDS Class members, include,
2 but are not limited to, the following:

- 3 a. Whether, within the four years prior to the filing of this
4 Complaint, Defendant made any telemarketing/solicitation call
5 (other than a call made for emergency purposes or made with
6 the prior express consent of the called party) to a ATDS Class
7 member using any automatic telephone dialing system or any
8 artificial or prerecorded voice to any telephone number
9 assigned to a cellular telephone service;
- 10 b. Whether Plaintiffs and the ATDS Class members were
11 damaged thereby, and the extent of damages for such violation;
12 and
- 13 c. Whether Defendant should be enjoined from engaging in such
14 conduct in the future.

15 31. As a person that received numerous telemarketing/solicitation calls
16 from Defendant using an automatic telephone dialing system or an artificial or
17 prerecorded voice, without Plaintiffs' prior express consent, Plaintiffs are asserting
18 claims that are typical of The ATDS Class.

19 32. Plaintiffs and members of The DNC Class were harmed by the acts of
20 Defendant in at least the following ways: Defendant illegally contacted Plaintiffs
21 and DNC Class members via their telephones for solicitation purposes, thereby
22 invading the privacy of said Plaintiffs and the DNC Class members whose
23 telephone numbers were on the National Do-Not-Call Registry. Plaintiffs and the
24 DNC Class members were damaged thereby.

25 33. Common questions of fact and law exist as to all members of The
26 DNC Class which predominate over any questions affecting only individual
27 members of The DNC Class. These common legal and factual questions, which do
28 not vary between DNC Class members, and which may be determined without

1 reference to the individual circumstances of any DNC Class members, include, but
2 are not limited to, the following:

- 3 a. Whether, within the four years prior to the filing of this
4 Complaint, Defendant or its agents placed more than one
5 solicitation call to the members of the DNC Class whose
6 telephone numbers were on the National Do-Not-Call Registry
7 and who had not granted prior express consent to Defendant and
8 did not have an established business relationship with
9 Defendant;
- 10 b. Whether Defendant obtained prior express written consent to
11 place solicitation calls to Plaintiffs or the DNC Class members'
12 telephones;
- 13 c. Whether Plaintiffs and the DNC Class member were damaged
14 thereby, and the extent of damages for such violation; and
- 15 d. Whether Defendant should be enjoined from engaging in such
16 conduct in the future.

17 34. As person, that received numerous solicitation calls from Defendant
18 within a 12-month period, who had not granted Defendant prior express consent
19 and did not have an established business relationship with Defendant, Plaintiffs are
20 asserting claims that are typical of the DNC Class.

21 35. Plaintiffs will fairly and adequately protect the interests of the
22 members of The Classes. Plaintiff has retained attorneys experienced in the
23 prosecution of class actions.

24 36. A class action is superior to other available methods of fair and
25 efficient adjudication of this controversy, since individual litigation of the claims
26 of all Classes members is impracticable. Even if every Classes member could
27 afford individual litigation, the court system could not. It would be unduly
28 burdensome to the courts in which individual litigation of numerous issues would

1 proceed. Individualized litigation would also present the potential for varying,
 2 inconsistent, or contradictory judgments and would magnify the delay and expense
 3 to all parties and to the court system resulting from multiple trials of the same
 4 complex factual issues. By contrast, the conduct of this action as a class action
 5 presents fewer management difficulties, conserves the resources of the parties and
 6 of the court system, and protects the rights of each Classes member.

7 37. The prosecution of separate actions by individual Classes members
 8 would create a risk of adjudications with respect to them that would, as a practical
 9 matter, be dispositive of the interests of the other Classes members not parties to
 10 such adjudications or that would substantially impair or impede the ability of such
 11 non-party Class members to protect their interests.

12 38. Defendant have acted or refused to act in respects generally applicable
 13 to The Classes, thereby making appropriate final and injunctive relief with regard
 14 to the members of the Classes as a whole.

15 **FIRST CAUSE OF ACTION**

16 **Negligent Violations of the Telephone Consumer Protection Act**

17 **47 U.S.C. §227(b).**

18 **On Behalf of the ATDS Class**

19 39. Plaintiffs repeat and incorporates by reference into this cause of action
 20 the allegations set forth above at Paragraphs 1-38.

21 40. The foregoing acts and omissions of Defendant constitute numerous
 22 and multiple negligent violations of the TCPA, including but not limited to each
 23 and every one of the above cited provisions of 47 U.S.C. § 227(b), and in particular
 24 47 U.S.C. § 227 (b)(1)(A).

25 41. As a result of Defendant' negligent violations of 47 U.S.C. § 227(b),
 26 Plaintiffs and the Class Members are entitled an award of \$500.00 in statutory
 27 damages, for each and every violation, pursuant to 47 U.S.C. § 227(b)(3)(B).

28 42. Plaintiffs and the ATDS Class members are also entitled to and seek

1 injunctive relief prohibiting such conduct in the future.

2 **SECOND CAUSE OF ACTION**

3 **Knowing and/or Willful Violations of the Telephone Consumer Protection**

4 **Act**

5 **47 U.S.C. §227(b)**

6 **On Behalf of the ATDS Class**

7 43. Plaintiffs repeat and incorporates by reference into this cause of action
8 the allegations set forth above at Paragraphs 1-38.

9 44. The foregoing acts and omissions of Defendant constitute numerous
10 and multiple knowing and/or willful violations of the TCPA, including but not
11 limited to each and every one of the above cited provisions of 47 U.S.C. § 227(b),
12 and in particular 47 U.S.C. § 227 (b)(1)(A).

13 45. As a result of Defendant' knowing and/or willful violations of 47
14 U.S.C. § 227(b), Plaintiffs and the ATDS Class members are entitled an award of
15 \$1,500.00 in statutory damages, for each and every violation, pursuant to 47 U.S.C.
16 § 227(b)(3)(B) and 47 U.S.C. § 227(b)(3)(C).

17 46. Plaintiffs and the Class members are also entitled to and seek
18 injunctive relief prohibiting such conduct in the future.

19 **THIRD CAUSE OF ACTION**

20 **Negligent Violations of the Telephone Consumer Protection Act**

21 **47 U.S.C. §227(c)**

22 **On Behalf of the DNC Class**

23 47. Plaintiffs repeat and incorporates by reference into this cause of action
24 the allegations set forth above at Paragraphs 1-38.

25 48. The foregoing acts and omissions of Defendant constitute numerous
26 and multiple negligent violations of the TCPA, including but not limited to each
27 and every one of the above cited provisions of 47 U.S.C. § 227(c), and in particular
28 47 U.S.C. § 227 (c)(5).

49. As a result of Defendant' negligent violations of 47 U.S.C. § 227(c), Plaintiffs and the DNC Class Members are entitled an award of \$500.00 in statutory damages, for each and every violation, pursuant to 47 U.S.C. § 227(c)(5)(B).

50. Plaintiffs and the DNC Class members are also entitled to and seek injunctive relief prohibiting such conduct in the future.

FOURTH CAUSE OF ACTION

Knowing and/or Willful Violations of the Telephone Consumer Protection Act

47 U.S.C. §227 et seq.

On Behalf of the DNC Class

51. Plaintiffs repeat and incorporates by reference into this cause of action the allegations set forth above at Paragraphs 1-38.

52. The foregoing acts and omissions of Defendant constitute numerous and multiple knowing and/or willful violations of the TCPA, including but not limited to each and every one of the above cited provisions of 47 U.S.C. § 227(c), in particular 47 U.S.C. § 227 (c)(5).

53. As a result of Defendant' knowing and/or willful violations of 47 U.S.C. § 227(c), Plaintiffs and the DNC Class members are entitled an award of \$1,500.00 in statutory damages, for each and every violation, pursuant to 47 U.S.C. § 227(c)(5).

54. Plaintiffs and the DNC Class members are also entitled to and seek injunctive relief prohibiting such conduct in the future.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs request judgment against Defendant for the following:

FIRST CAUSE OF ACTION

Negligent Violations of the Telephone Consumer Protection Act

47 U.S.C. §227(b)

- As a result of Defendant' negligent violations of 47 U.S.C.

1 §227(b)(1), Plaintiffs and the ATDS Class members are entitled to
2 and request \$500 in statutory damages, for each and every violation,
3 pursuant to 47 U.S.C. 227(b)(3)(B).

- 4 • Any and all other relief that the Court deems just and proper.

5 **SECOND CAUSE OF ACTION**

6 **Knowing and/or Willful Violations of the Telephone Consumer Protection**

7 **Act**

8 **47 U.S.C. §227(b)**

- 9 • As a result of Defendant' willful and/or knowing violations of 47
10 U.S.C. §227(b)(1), Plaintiffs and the ATDS Class members are
11 entitled to and request treble damages, as provided by statute, up to
12 \$1,500, for each and every violation, pursuant to 47 U.S.C.
13 §227(b)(3)(B) and 47 U.S.C. §227(b)(3)(C).

- 14 • Any and all other relief that the Court deems just and proper.

15 **THIRD CAUSE OF ACTION**

16 **Negligent Violations of the Telephone Consumer Protection Act**

17 **47 U.S.C. §227(c)**

- 18 • As a result of Defendant' negligent violations of 47 U.S.C.
19 §227(c)(5), Plaintiffs and the DNC Class members are entitled to and
20 request \$500 in statutory damages, for each and every violation,
21 pursuant to 47 U.S.C. 227(c)(5).

- 22 • Any and all other relief that the Court deems just and proper.

23 **FOURTH CAUSE OF ACTION**

24 **Knowing and/or Willful Violations of the Telephone Consumer Protection**

25 **Act**

26 **47 U.S.C. §227(c)**

- 27 • As a result of Defendant' willful and/or knowing violations of 47
28 U.S.C. §227(c)(5), Plaintiffs and the DNC Class members are entitled

1 to and request treble damages, as provided by statute, up to \$1,500,
2 for each and every violation, pursuant to 47 U.S.C. §227(c)(5).

- 3 • Any and all other relief that the Court deems just and proper.

4 **JURY DEMAND**

- 5 • Pursuant to the Seventh Amendment to the Constitution of the United
6 States of America, Plaintiffs are entitled to, and demands, a trial by
7 jury.

8
9 Respectfully Submitted this 24th Day of May, 2018.

10
11 LAW OFFICES OF TODD M. FRIEDMAN, P.C.

12
13 By: 


14 Cynthia Z. Levin, Esq.

15 Law Offices of Todd M. Friedman

16 Attorney for Plaintiff

17
18 FILED

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19 KATE BRIDGMAN, Clerk
20 By:  Dep. Clerk